THE UNITED STATES SUPREME COURT AND THE UTAH EIGHT-HOURS' LAW.

ALTHOUGH it has passed almost as unheralded by the serious journals devoted to sociology as by the daily press, the recent decision of the supreme court of the United States sustaining the constitutionality of the Utah statute which constitutes eight hours a legal working day in mines and smelters may, without exaggeration, be compared with the Dred Scott case as a decision of the highest national importance. For while that decision fomented rebellion and contributed mightily to the forced reconstruction of the southern states, this decision averts a danger no less actual, though more insidious and slow to be perceived; while that decision worked destructively, this one works constructively; while the Dred Scott decision destroyed the hope that chattel slavery could be restricted by constitutional methods, this decision confirms the hope that industrial freedom may be established and extended by these methods, legislatures and courts working harmoniously to promote the health and welfare of the wage-earners. By its reasonable and affirmative construction and definition of the intent and scope of the fourteenth amendment to the constitution of the United States, this decision opens the way for a long and peaceful evolution of the beneficent powers of the states, and for reasonable and equitable conditions of work. The fact that it immediately secures for the employés in certain industries in Utah the benefits of the legal working day, while of great importance, is not the vital point in this decision. Far more important to the nation and the future is the fact that it rehabilitates the states in the performance of some of their most weighty functions, and reaffirms principles which, formerly regarded as self-evident, have in recent years been not only disputed but abrogated by state supreme courts in a long series of decisions.

In all great industrial countries it has long been recognized

that manufacture and commerce need equitable conditions; that legislative requirements of whatever kind, if imposed upon one, must be imposed upon all alike; that discrimination must be avoided, not alone because it is unjust, but because it is fatal. Hence legislation regulating the conditions of employment is usually embodied in national measures, the execution alone being left to the local authorities, while broad, fundamental provisions are uniform for one industry throughout an empire, a republic, or a kingdom. In America alone the constitution leaves in effect to the states the regulation of the relations of employés to their work, and of the conditions surrounding and attending that work (except that employés who come under the interstate commerce act receive the benefit of certain safeguards precribed under that act).

When, therefore, state supreme courts take the position held by the Illinois court in its decision (Ritchie *vs.* the People) of March 15, 1895, annulling the Illinois eight-hours' law, viz.: that, in consequence of the fourteenth amendment to the constitution of the United States, the individual states also are prohibited from interfering with these relations and conditions, commerce and manufacture in states affected by such decisions are, *pro tanto*, worse off than in other states and countries; for they are thus left without either state or national provision for that uniformity of relations which is one of their most vital interests. This construction of the fourteenth amendment, adopted and disastrously applied in recent years by the supreme courts of Illinois and several other states, has exercised a doubly injurious influence: it has minimized the power and efficiency of the states, and it has thereby deprived employés of a protection which they could derive from no other source. Incalculable national importance attaches to this decision of the federal supreme court, because it checks that blighting tendency of the state supreme courts.

But for the unwholesome decisions of state courts arbitrarily placing limitations upon the powers of the states and reducing to lawlessness (for lack of any legislative body recognized by the state courts as competent to deal with them) the relations

of employés to their work, much of the present epoch-making federal decision might seem to be mere truism. Under existing decisions, however, it offers the curious and instructive spectacle of the federal supreme court assigning to the states duties and powers which the supreme courts of those states have declared not to be theirs.

In 1895 the supreme court of Illinois decided that the state cannot restrict by legislation the hours of labor of any adult. About the same time the legislature of Colorado inquired of the Colorado supreme court whether a proposed statute limiting to eight hours the working day of laborers and mechanics would be constitutional; or whether it could be rendered constitutional by an amendment providing that it should apply only to mines and factories. The supreme court of Colorado replied that both proposals "would be unconstitutional, because they violate the rights of parties to make their own contracts — a right guaranteed by our bill of rights and protected by the fourteenth amendment to the constitution of the United States." In 1894 the Nebraska supreme court had decided that "an act of the legislature of that state providing that eight hours should constitute a legal day's work for all classes of mechanics, servants, and laborers throughout the state, excepting those engaged in farm and domestic labor, and making violation of its provisions a misdemeanor, was unconstitutional and, therefore, void, both as special legislation and as attempting to prevent persons, legally competent to enter into contracts, from making their own contracts." Of these decisions and opinions so careful a writer as Mr. F. J. Stimson said, no longer ago than the September issue of the *Atlantic Monthly:* "These decisions have undoubtedly given the quietus in the United States to any attempt to limit generally the time that a grown man may labor."

In our report as factory inspectors, for 1895, we referred to the Illinois decision in the following terms: "The new feature introduced into the body of American legislative precedent by this decision is the court's assumption that it is not exclusively a matter of the constitution of Illinois. The state constitution could be altered, by a constitutional convention, so that the

hours of labor could be regulated by legislative enactment, as they are in the older industrial communities. The court, however, makes the fourteenth amendment to the constitution of the United States the basis of its decision. If this position were sound, all efforts for legislative restriction of the working day would be wasted, since there is no prospect of any immediate change in the constitution of the United States.

"Happily the weight of precedent is not on the side of the Illinois court; the precedents of the courts of Massachusetts and New York are in the other direction. In Massachusetts, for twenty years past, it has been an established principle of the supreme court that the hours of work of women and children may be regulated by statute. The Massachusetts precedent has had such weight in New York that no case has been carried to the supreme court or to the court of appeals. The constitutionality of the ten-hours' law, though suits have been brought under it repeatedly, has never been disputed. It remained for the supreme court of Illinois to discover that the amendment to the constitution of the United States, passed to guarantee the negro from oppression, has become an insuperable obstacle to the protection of women and children. Nor is it reasonable to suppose that this unique interpretation of the fourteenth amendment will be permanently maintained even in Illinois. When the observation of a few more years shall have convinced the medical profession, the philanthropists, and the educators, as experience has already convinced the factory employés, that it is a life-and-death matter to have the working day of reasonable length guaranteed by law, it will be found possible to rescue the fourteenth amendment from the perverted application upon which this decision rests. We may hope that Ritchie *vs.* the People will then be added to the reversed decisions in which the supreme court of Illinois is so rich." At that time no one could foresee that the Illinois decision would be overruled so promptly or so authoritatively as the event has proved.

Undeterred by the three recent and discouraging decisions of western courts, the people of Utah fell back upon the precedent of Massachusetts, whose supreme court had decided in 1876

(People *vs.* the Hamilton Manufacturing Company) that the Massachusetts legislature had the power to restrict by statute the hours of labor of adult women employed in factories. The Illinois supreme court, in its decision annulling the Illinois eight-hours' law, had taken occasion to refer to the Massachusetts decision, stating that "it is not in line with the current of authority," and explaining that it could be arrived at only by reason of the "large discretion vested in the legislative branch of the government." The "large discretion" referred to is contained in the following words of chap. ii, sec. 4, of the constitution of Massachusetts: "Full power and authority are hereby given and granted to the said general court, from time to time, to make, ordain, and establish all manner of wholesome and reasonable laws, ordinances, statutes, directions, and instructions, either with penalties or without; so as the same be not repugnant to this constitution, as they shall judge to be for the good and welfare of this commonwealth, and for the governing thereof."

From the days of this sweeping Massachusetts provision, which took effect October 1, 1780, and has remained in force in Massachusetts unchanged to the present day, the tendency has been to reduce the powers of legislatures, both by restrictions inserted in state constitutions and by the interpretation placed upon those constitutions by state supreme courts. Strongest of all has been the use of the fourteenth amendment by the state courts. This tendency to reduce legislative power in the states to zero (degrading the state government to a mere mechanism for laying and collecting taxes for the maintenance of the judiciary, the militia, and the state charities) reached its culminating point in the Illinois decision of 1895 (Ritchie *vs.* the People). How far the pendulum has already swung back toward the position of Massachusetts in 1780 is shown in the action of the people of Utah, in the decision of their supreme court, and in the present decision of the supreme court of the United States.

The people of Utah, instructed by the supreme court of Illinois in 1895, showed by their action in 1896 that they had learned their lesson. For, not content with such sweeping generalities as those of the Massachusetts state constitution, they incorporated

in their own constitution of 1896 an article dealing explicitly with the rights of labor, as follows:

ARTICLE XVI, SECTION 1. The rights of labor shall have just protection through laws calculated to promote the industrial welfare of the state.

SEC. 2. The legislature shall provide by law for a board of labor conciliation and arbitration, which shall fairly represent the interests of both capital and labor. The board shall perform duties and receive compensation as prescribed by law.

SEC. 3. The legislature shall prohibit:

(1) The employment of women, or of children under the age of fourteen years, in underground mines.

(2) The contracting of convict labor.

(3) The labor of convicts outside of prison grounds, except on public works under the direct control of the state.

(4) The political and commercial control of employés.

SEC. 4. The exchange of blacklists by railroad companies or other corporations, associations, or persons is prohibited.

SEC. 5. The right of action to recover damages for injuries resulting in death shall never be abrogated, and the amount recoverable shall not be subject to any statutory limitation.

SEC. 6. Eight hours shall constitute a day's work on all works or undertakings carried on or aided by the state, county, or municipal governments; and the legislature shall pass laws to provide for the health and safety of employés in factories, smelters, and mines.

SEC. 7. The legislature, by appropriate legislation, shall provide for the enforcement of the provisions of this article.

In accordance with the provision of sec. 7 of this article, the Utah legislature proceeded to enact a statute, of which the essential features are as follows:

SECTION 1. The period of employment of workingmen in all underground mines or workings shall be eight hours per day, except in cases of emergency where life or property is in imminent danger.

SEC. 2. The period of employment of workingmen in smelters and all other institutions for the reduction or refining of ores or metals shall be eight hours per day, except in cases of emergency where life or property is in imminent danger.

On June 26, 1896, one Holden was arrested under a warrant charging him with employing a man to work in a mine ten hours in one day. The court, having heard the evidence in the case, imposed a fine of $50 (fifty dollars) and costs, and ordered the

defendant to be imprisoned in the county jail for a term of fifty-seven days, or until the fine and costs were paid. The case was immediately appealed, under habeas corpus proceedings, to the supreme court of Utah, and the law was sustained. The case was then carried to the federal supreme court, which handed down its decision on February 28, Justices Peckham and Brewer dissenting. The law was again sustained. The position of the supreme court of the United States was defined as to the constitutionality of statutory restrictions upon the hours of labor of adults; and as to the powers and duties, in general, of the states with regard to the health and welfare of employés as such. Although the decisions of the supreme courts of Nebraska, Illinois, and Colorado are referred to indirectly only, they are all comprehensively overruled. But the great, the incalculable service which is rendered by this decision is its rout and destruction of the bogy-man with which state supreme courts have for years been terrifying themselves, and each other, and timorous legislatures, under the name of the fourteenth amendment to the constitution of the United States. Once for all, it is convincingly laid down by this decision that state legislation restricting the hours of labor of employés in occupations injurious to the health will not be annulled by the federal supreme court on grounds of conflict with the fourteenth amendment to the constitution of the United States.

The decision is so coherent, so closely knit, that injustice to it is done by quoting isolated parts of it by way of illustrating the position taken by the court. Yet, in default of space for reproducing the whole of this humane and enlightened utterance, it must suffice to give some of the characteristic dicta. Says the court: "The constitution of the United States, which is necessarily and to a large extent inflexible, and exceedingly difficult of amendment, *should not be so construed as to deprive the states of the power to so amend their laws as to make them conform to the wishes of the citizens as they may deem best for the public welfare, without bringing them into conflict with the supreme law of the land.*" And again the court says: "An examination of the classes of cases arising under the fourteenth amendment will

demonstrate that, in passing upon the validity of state legislation under that amendment, this court has not failed to recognize the fact that the law is, to a certain extent, a progressive science; that in some of the states, methods of procedure which, at the time the constitution was adopted, were deemed essential to the protection and safety of the people, or to the liberty of the citizen, have been found no longer necessary; that restrictions which had formerly been laid upon the conduct of individuals, or of classes of individuals, had proved detrimental to their interests, while, on the other hand, *certain other classes of persons* (*particularly those engaged in dangerous or unhealthy occupations*) *have been found to be in need of aadditional protection.*" "Of course it is impossible to forecast the character or extent of these changes; but in view of the fact that, from the day Magna Charta was signed to the present moment, amendments to the structure of the law have been made with increasing frequency, it is impossible to suppose that they will not continue, *and the law be forced to adapt itself to new conditions of society, and particularly to the new relations between employers and employés as they arise.*" And again the court says: "While this court has held that the police powers cannot be put forward as an excuse for oppressive and unjust legislation, it may be resorted to for the purpose of preserving the health, public safety, or morals, or the abatement of public nuisances, *and a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of those interests.*" Finally the court quotes with approval the most advanced position taken by the supreme court of Utah, as follows: "*Though reasonable doubts may exist as to the power of the legislature to pass a law, or as to whether the law is calculated or adapted to promote the health, safety, or comfort of the people, or to secure good order or promote the general welfare, we must resolve them in favor of that branch of the government.*"

Having thus come to the rescue of the state legislatures and their powers in general, the court deals with their duties in regard to the health of employés as such. It sets forth the general proposition that "It is as much in the interest of the

state that the public health should be preserved as that life should be made secure. With this in view, quarantine laws have been enacted in most, if not all, of the states; insane asylums, public hospitals, and institutions for the care and instruction of the blind established; and especial measures taken for the exclusion of infected cattle, rags, and decayed fruit. In other states, laws have been enacted limiting the hours during which women and children shall be employed in factories; and while their constitutionality, at least as applied to women, has been doubted in some of the states, they have been generally upheld. Thus in the case of the Hamilton Manufacturing Company (120 Mass., 283) it was held that a statute prohibiting the employment of all persons under eighteen, and of all women, in any manufacturing establishment more than sixty hours per week violates no contract of the commonwealth implied in the granting of a charter to a manufacturing company, nor any right reserved under the constitution to any individual citizen, and may be maintained as a health or police regulation."

It is refreshing to find the valuable Massachusetts decision thus authoritatively brought back into the "current of authority" from which it was, as we have seen, thrust forth by the Illinois court in its now overruled decision of 1895 in the case of Ritchie *vs.* the People.

The court also settled the vital question: Who shall decide which occupations are sufficiently injurious to justify the restriction of the hours of daily labor of persons employed in them? On no point have state courts been more arrogant, the Illinois court taking, perhaps, the most extreme position of all in the following passage of its decision (Ritchie *vs.* the People): "It (the eight-hour section of the factory law) does not inhibit their (women's) employment in factories or workshops. On the contrary, it recognizes such places as proper for them to work in by permitting their labor therein during eight hours of each day. The question here is not whether a particular employment is a proper one for the use of female labor, but the question is whether, in an employment which is conceded to be lawful in itself and suitable for woman to be

engaged in, she shall be deprived of the right to determine for herself how many hours she can and will work each day. *There is no ground—at least none which has been made manifest to us in arguments of counsel—for fixing upon eight hours in one day as the limit within which woman can work without injury to her physique, and beyond which, if she work, injury will necessarily follow.*" The court was naturally not in a position to investigate the conditions of work in the factories and workshops of Illinois. That is not its function. But the legislature of 1893 had been in a position to investigate the whole condition of manufacture in the state; it had, indeed, appointed a joint committee of the house and senate to investigate the factories and workshops in operation; this committee had visited a large number of establishments, and had taken a large amount of testimony from employers and employés, physicians, visiting nurses, inspectors, and other witnesses, and had decided that, in view of the intensity of work and the rate of speed required in virtually all occupations, eight hours did constitute a limit of hours beyond which women could not work without injury. All this no court can do; it has no apparatus for such investigations; but that did not prevent the Illinois court from usurping the right of decision which the present decision of the federal supreme court happily reassigns to the legislature. On the powers of the legislature in the matter of health and hours of labor, the federal supreme court says: "These employments, when too long pursued, the legislature has judged to be detrimental to the health of the employés; and, so long as there are reasonable grounds for believing that this is so, its decision upon this subject cannot be reviewed by the federal courts." And elsewhere the court quotes with approval the words of the Utah court: "It may be said that labor in such conditions must be performed. Granting that the period of labor each day should be of reasonable length, twelve hours per day would be less injurious than fourteen, ten than twelve, and eight than ten. The legislature has named eight. Such a period was deemed reasonable."

The Illinois court (Ritchie *vs.* the People) said: "The police

powers of the state can only be permitted to limit or abridge such a fundamental right as the right to make contracts, when the exercise of such power is necessary to promote the health, comfort, welfare, or safety of society or the public ; *it is doubtful whether it can be exercised to prevent injury to the individual engaged in a particular calling.*" In beneficent contrast with this sinister dictum is the following from the United States supreme court : "The legislature has also recognized the fact, which the experience of legislators in many states has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employés, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health and strength. In other words, the proprietors lay down the rules, and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority.

"It may not be improper to suggest in this connection that, although the prosecution in this case was against the employer of labor, who apparently, under the statute, is the only one liable, his defense is not so much that his right to contract has been infringed upon, but that the act works a peculiar hardship to his employés, whose right to labor as long as they please is alleged to be thereby violated. The argument would certainly come with better grace and greater cogency from the latter class. *But the fact that both parties are of full age, and competent to contract, does not necessarily deprive the state of the power to interfere, where the parties do not stand upon an equality, or where the public health demands that one party to the contract should be protected against himself. The state still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety, and welfare are sacrificed or neglected, the state must suffer.*"

This decision is, of course, not retroactive, and therefore does

not revive the Illinois statute restricting to eight hours per day the work of female employés engaged in manufacture, which was enacted in 1893 and annulled by the state supreme court in 1895. It does, however, by overruling virtually every proposition laid down by the Illinois court in that decision, give satisfactory assurance that the next eight-hours' law enacted in Illinois, if restricted in its terms to occupations dangerous to the health of the employés, must stand as good law, and cannot be annulled. This decision also renders it probable that legislation in regard to the hours of labor will, henceforth, deal not especially with women or children, but with all the employés in occupations injurious to the human organism. Thus the miners in Illinois may obtain statutory confirmation of the eight-hours' day which they now enjoy only by means of contracts enforced by the dread of renewed strikes. And the women in the Massachusetts cotton mills who tend ever-increasing numbers of machines, at ever-increasing rates of speed, will be entitled to claim legislative restriction of the hours of labor on their behalf, on the ground of the exhausting nature of their occupation. The same reasoning applies to all the women driving foot-power sewing machines in sweatshops and to numerous other employments.

The logical result of this decision should be renewed activity on behalf of the statutory eight-hours' working day for all young people, on grounds of health; and for all adults in occupations injurious to the health. While it seems reasonable to suppose that, in view of this federal precedent, state supreme courts would not annul such statutes, it would be safer to embody in state constitutions provisions similar to those already embodied in the state constitutions of Massachusetts and Utah. Effort for legislative restriction of the work day need not, however, be deferred to await such action; for this precedent is of such weight, and so explicit that, after it, state courts will have either to ignore it willfully, or to change the lines of reasoning which they have followed hitherto.

The immediate practical lesson of this decision for the advo-

cates of social amelioration by constitutional methods seems to be briefly as follows:

1. Legislation limiting the hours of labor of employés in occupations injurious to the health will not be annulled by the federal supreme court on the ground of conflict with the fourteenth amendment to the constitution of the United States.

2. The short working day may be established by statute in the various states for all those occupations which are, in themselves, injurious to the health of the employés; *and it rests with the state legislature to decide which are such occupations.*

3. Legislation limiting the hours of labor of employés need not be restricted to women and minors, as has been the usage hitherto; the question being, henceforth, not as to the age or sex of the employés, but as to the nature of the occupation.

4. It is desirable to provide for such legislation by inserting in the state constitution (wherever there is not already such an enabling article) a provision similar, either to the general article of the Massachusetts constitution, or the special article providing for the rights of labor which forms the distinguishing characteristic of the new Utah state constitution.

It is also to be remembered that these things do not occur spontaneously; they are the fruits of long and patient labor. Adverse decisions in many states have cumbered the earth with error, discouragement, apathy, if not actual antagonism, to this sane and hopeful, though slow and difficult, method of social amelioration. And the present decision does but open the way, by sustaining a statute affecting a few hundred men in a state not highly developed industrially, and by affording a precedent, national in its scope, for doing over again successfully work which, in many states, has once been done in vain by the patient effort of the labor organizations. A long campaign lies before these organizations before the older states can be brought to the point thus early reached by Utah. State constitutional conventions must be held; state constitutions must be amended; legislatures must be induced to act; state supreme courts must be brought to follow this decision of the federal supreme court;

years must be consumed in education and agitation before the fruits of this harvest of enlightened judicial interpretation can be fully reaped and enjoyed by the toilers throughout the United States. No time should be lost; the work should begin at once.

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NOTE.—Cases to which reference is made in the foregoing: Ritchie *vs.* the People, Illinois, March 15, 1898; Law *vs.* Rees Publishing Company, Nebraska, June 6, 1894; People *vs.* Hamilton Manufacturing Company, 120 Massachusetts, 383, 1876; Holden *vs.* Hardy, United States supreme court, February 28, 1896.